



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Jeff Madore, Bureau of Remediation and Waste Management

DATE: March 4, 2010

RE: Final Adoption Major Substantive Rules, Chapter 692, Siting of Oil Storage Facilities and Chapter 700, Wellhead Protection: Siting of Facilities That Pose a Significant Threat to Drinking Water

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Statutory and Regulatory Reference:

- 38 MRSA chapter 13-D (§§ 1391-1399)
- 38 MRSA §341-D(1-B)
- PL 2007, chapter 569, section 7

Scope:

Chapter 692 applies to the siting of aboveground and underground oil storage facilities in wellhead protection areas and within certain ground water aquifers as defined in the rule.

Chapter 700 applies to the siting of certain designated facilities that pose a significant threat to drinking water in wellhead protection zones and within certain ground water aquifers as defined in the rule. These facilities include: automobile graveyards; automobile body shops or other commercial automobile maintenance and repair facilities; dry cleaning facilities that use perchloroethylene; metal finishing or plating facilities; and commercial hazardous waste facilities.

Description:

P. L. 2007, Chapter 569, amended Title 38 to establish a restriction on the siting of oil storage facilities, as well as other designated facilities, in wellhead protection zones and within aquifers mapped by the Maine Geological Survey. The department chose to pursue two rulemakings, one addressing solely oil storage facilities, Chapter 692, and Chapter 700 that addresses the other designated facilities.

Both Chapters closely mirror the legislation and includes provisions for variances from the siting restrictions for oil storage facilities in a number of instances:

1) When it has been demonstrated that there is no hydrological connection between the facility and the water supply at issue;

2) When it has been affirmatively demonstrated that the aquifer has been incorrectly mapped;

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3) When it has been affirmatively demonstrated that the aquifer has a potentially low use or is polluted; or

4) When an applicant has demonstrated that the facility will be designed and installed to further reduce the risk of discharges of oil and the likelihood of future ground water contamination.

The rule does not provide for variances within high potential aquifers as identified in the rule.

The rule includes specific engineering, siting and monitoring criteria to ensure that the intent of the enabling legislation is met.

The second session of the 124th Legislature approved the Legislative Resolves for Chapters 692 (LD 1527) and 700 (LD 1526) in February, 2010. The Legislature's Natural Resources Committee (NAT) held a public hearing and a work session on the Resolves at which no comments were received from the public or regulated community. The NAT did not have any questions on the Resolves from the public, regulated community or the department.

Environmental Issues:

The requirements of the rule support the implementation of Maine's new wellhead protection law, Wellhead Protection, 38 MRSA §§1391-1399. The purpose of the law as stated in section 1391 is "to protect the health, safety and welfare of Maine's citizens by establishing a coordinated statewide program to protect drinking water wells from contamination by oil or hazardous substances." The law accomplishes this purpose mainly by restricting the siting of oil storage facilities that, by their nature, pose an unacceptable risk to groundwater quality and therefore should be kept away, if at all possible, from drinking water supplies, including sand and gravel aquifers mapped by the Maine Geological Survey. These aquifers are the most cost effective potential future public water sources for Maine communities fortunate enough to have them but they are particularly vulnerable to contamination because of their inherent permeability.

Department Recommendations:

The Department recommends that the Board finally adopt Chapter 692, Siting of Oil Storage Facilities and Chapter 700 Wellhead Protection: Siting of Facilities that Pose a Significant Threat to Drinking Water.

Estimated Time of Presentation:

Approximately 20 minutes.